

**SUMMARY OF PERCEPTIONS VB/I70 WORKING GROUP MEETING 1/27/05
PRESENTATION, DISCUSSION, AND OUTCOMES OF
EPA-CDPHE CONCEPT FOR ADDRESSING EXTERNAL LEAD BASED PAINT**

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PURPOSE

The purpose of this memo is to summarize my understanding of the external lead based paint discussion and the outcomes of the discussion at the 1/27/05 VB/I70 Working Group meeting. The memo addresses that portion of the discussion about the concept EPA and CDPHE developed for addressing the potential for external lead based paint to recontaminate soil that has been replaced previously, about which I perceived some disagreement among meeting participants. The memo does not address the related issues about which I did not perceive disagreement, e.g., pre-bid conference, or the other agenda items.

The perceptions outlined below are mine.

I thought a piece attempting to summarize the discussion and outcomes might be useful because of the way the discussion flowed, reflected in the meeting notes I sent previously, and because I wonder if meeting participants might have different perceptions about the outcomes. My hope is that if meeting participants have different perceptions about the outcomes, that they will inform me of this, and that the differences can be addressed as soon as possible so that the important work can proceed.

**OUTCOMES OF 1/27/05 WORKING GROUP MEETING CONCERNING
CONCEPT FOR ADDRESSING EXTERNAL LEAD BASED PAINT**

The outcomes on this issue seem to be:

- The concept presented will be the one that EPA –CDPHE applies, unless EPA and state management direct their staff to reconsider the method they presented at the 1/27/05 meeting.
- The effort to address external lead based paint will begin as soon as the construction season begins, which is by mid-February.
- Community members, e.g., CEASE, will send a letter to EPA and state management requesting reconsideration of the concept, and presumably support their request with the rationale they presented during the Working Group meeting.
- Community members and their partners will begin to identify additional resources and activities for addressing the exterior lead based paint issue beyond what may be accomplished under the Superfund program.

SUMMARY OF DISCUSSION

Victor Ketellapper, VB/I70 Site Project Manager, Region VIII EPA presented a proposal describing how EPA and CDPHE will address the potential problem of exterior lead based paint recontaminating the residential soils that have been replaced at the VB/I70 Superfund Site – using Superfund authority and funding resources.

Unfortunately, under the Superfund Law, EPA does not have authority or funding resources to address the risks to health posed by lead based paint.

However, EPA Headquarters issued guidance in 2003 that enables Superfund resources to be used to address external lead based paint that has the potential to recontaminate soil that has been remediated already. For Superfund resources to address external lead based paint, the guidance states that two conditions must be met:

1. Other funding sources are not available; and
2. The decision to address the external lead based paint must be based on how the properties were evaluated and qualified to be cleaned-up in the first place.

The EPA-CDPHE concept is centered on the same method that was used to sample soil on a residential lot and calculate a composite score from the results to determine if the threshold is exceeded that would enable the contaminated soil to be removed and replaced with new uncontaminated soil.

Essentially, under the concept, the evaluation would have to demonstrate that enough lead paint could fall and recontaminate the new soil, so that under the rules of the initial evaluation, the threshold enabling removal and replacement of the contaminated soils would be surpassed again.

The EPA-CDPHE method for sampling and developing the composite score is the method to which the Working Group eventually agreed to use for the initial sampling and evaluation.

A key feature of this process, and apparently the point of contention, is that the method relies on sampling for lead contamination at 30 locations throughout an entire lot and aggregating the results into a composite score.

The EPA – CDPHE approach is based on the legal and administrative reality of the Superfund program, that program resources can be used to address the potential problems posed by external lead based paint ONLY if the decision meets the two conditions noted above.

EPA and CDPHE staff in addition to Victor and Barbara O'Grady needed to be involved in developing this concept. The agencies' staff, wanting to address the potential problem of exterior lead based paint as fully as possible, think they stretched the rationale of the proposed concept as far as they could while still remaining within the constraints of the Superfund guidance document.

Meeting participants representing the community, and particularly their technical advocate, Dr. Michael Kosnett, questioned the logic of the proposal. They asked why the evaluation method would be based on sampling from the entire property and aggregating these values to obtain a score, when the area 3 – 6 feet from a building is where recontamination from external lead based paint reasonably would be expected to occur and pose a risk to the health of occupants.

The community members suggested that the score would be affected significantly by the total lot size, with a larger lot having a lower score compared to a smaller lot -- even in a case where the potential for recontamination of the soil 3-6 feet from both buildings might be the same. The overall result is that, the larger the lot, the lower the probability that it will receive a score exceeding the threshold, thus entitling it to the external lead based paint remedy that EPA and CDPHE are proposing. The danger perceived is that larger lots may receive low scores and not be eligible for external lead based paint removal even if the soil adjacent to the building is contaminated at levels posing a risk to occupants.

Community members' questions seemed to be based on the physical and biological reality of where recontamination will occur potentially and the potential health threat to occupants.

Personally, EPA and state personnel attending the meeting don't disagree with the notion that recontamination in all probability would occur 3 -6 feet from the building. Personally, they would like to be able to do more – but they reiterated that they are constrained by the legal and administrative reality of the Superfund Program. They think that they and the other agency staff members involved have 'pushed the envelope' as far as they can to rationalize action under the program.

Community members acknowledged that they perceive the good intentions and good work of the agency staff participating in the working group.

Victor suggested that community representatives could send a letter to EPA and CDPHE management requesting reconsideration of the concept for a more extensive one addressing external lead based paint more fully.

In addition, several meeting participants suggested that to go further in addressing the problem, the community and its agency partners, e.g., Denver Environmental Health, Northeast Denver Housing, begin to identify other potential resources, including programs of other government agencies (e.g., US Department of Housing and Urban Development), and how the community might use these to 'pick-up' from where the Superfund program leaves off in addressing the problem of exterior lead based paint, e.g., through educating community residents.